Title 24-A: MAINE INSURANCE CODE

Chapter 68-A: LONG-TERM CARE INSURANCE
HEADING: PL 1999, c. 292, §2 (new)

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Text current through August 1, 2014, see disclaimer at end of document.

§5071. SCOPE

This chapter applies to long-term care insurance policies or certificates delivered or issued for delivery in this State on or after January 1, 2000, except it does not apply to certificates issued under policies issued in other states to employer groups as described in section 2804 and labor union groups as described in section 2805. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws to the extent that these laws are not inconsistent with the requirements of this chapter, except that laws and rules designed and intended to apply to Medicare supplement insurance may not be applied to long-term care insurance. Notwithstanding this chapter, any product advertised, marketed or offered as long-term care insurance is subject to this chapter. [1999, c. 292, §2 (NEW).]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5072. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 292, §2 (NEW).]

1. **Applicant.** "Applicant" means:

A. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; or [1999, c. 292, §2 (NEW).]

B. In the case of a group long-term care insurance policy, the proposed certificate holder. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

2. **Certificate.** "Certificate" means any certificate issued under a group long-term care insurance policy.

[1999, c. 292, §2 (NEW) .]

3. **Group long-term care insurance policy.** "Group long-term care insurance policy" means a long-term care insurance policy that is delivered or issued for delivery in this State to an employer group, private purchasing alliance, labor union group, association group, trustee group, credit union group or other group as described in chapter 35.

[1999, c. 292, §2 (NEW) .]

4. **Long-term care insurance policy.** "Long-term care insurance policy" means any individual or group insurance policy or rider offered by a life or health insurer, fraternal benefit society, nonprofit hospital and medical service organization, nonprofit health care service organization, prepaid health plan organization, health maintenance organization or other similar organization authorized to issue life or health insurance that is advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred basis, indemnity basis, prepaid or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal

care services provided in a setting other than an acute care unit of a hospital. "Long-term care insurance policy" includes individual and group annuities and life insurance policies or riders that directly provide or that supplement coverage for long-term care insurance and a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. "Long-term care insurance policy" does not include:

A. An insurance policy or contract described as Medicare supplement insurance under chapter 67; [1999, c. 292, §2 (NEW).]

B. An insurance policy or contract offered primarily to provide basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage or limited benefit health coverage; and [1999, c. 292, §2 (NEW).]

C. With regard to life insurance, an insurance policy or contract that accelerates the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement and that provides the option of a lump sum payment for those benefits and does not condition the benefits or the eligibility for those benefits upon the receipt of long-term care. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5073. EXTRATERRITORIAL JURISDICTION; GROUP LONG-TERM CARE INSURANCE

1. **Groups other than employer, union, trustee and association groups.** A group long-term care insurance policy may not be offered to a resident of this State under a group policy issued in another state to a group other than an employer group as described in section 2804, a labor union group as described in section 2805, a trustee group as described in section 2806 or an association group as described in section 2805-A unless the superintendent has made a determination that the requirements of this chapter have been met.

[1999, c. 292, §2 (NEW) .]

2. **Trustee groups.** Group long-term care insurance may not be offered to an employee of an employer covered under a group policy issued in another state to a trustee group as described in section 2806 if a plurality of the employer's employees are based in this State unless the superintendent has made a determination that the requirements of this chapter have been met.

[1999, c. 292, §2 (NEW) .]

3. **Association groups.** The following applies to group long-term care insurance coverage issued to association groups.

A. Group long-term care insurance coverage may not be offered to a resident of this State under a group policy issued in another state to an association group as described in section 2805-A, other than an association of employers, unless the superintendent has made a determination that the requirements of this chapter have been met. [1999, c. 292, §2 (NEW).]

B. Group long-term care insurance may not be offered to an employee of an employer covered under a group policy issued in another state to an association of employers if a plurality of the employer's employees are based in this State unless the superintendent has made a determination that the requirements of this chapter have been met. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5074. DISCLOSURE STANDARDS FOR LONG-TERM CARE INSURANCE

The following standards apply to disclosures relating to long-term care insurance. [1999, c. 292, §2 (NEW).]

1. **Disclosures.** The superintendent may adopt rules that include standards for full and fair disclosure setting forth the manner, content and required disclosures for the sale of long-term care insurance policies and certificates; terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage provisions; coverage of dependents; preexisting conditions; termination of insurance; continuation or conversion; probationary periods; limitations, exceptions and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 292, §2 (NEW) .]

2. **Outline of coverage.** An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. In the case of producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form. In the case of a policy issued to an employer group as described in section 2804, a labor union group as described in section 2805 or a trustee group as described in section 2806, an outline of coverage is not required to be provided if the information described in this subsection is contained in other materials relating to enrollment that have been filed with and approved by the superintendent. The outline of coverage must be in a standard format, including style, arrangement, overall appearance and content, prescribed by the superintendent and must include the following information:

A. A description of the principal benefits and coverage provided in the policy or certificate; [1999, c. 292, §2 (NEW).]

B. A statement of the principal exclusions, reductions and limitations contained in the policy or certificate; [1999, c. 292, §2 (NEW).]

C. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described; [1999, c. 292, §2 (NEW).]

D. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions; [1999, c. 292, §2 (NEW).]

E. A description of the terms under which the policy or certificate may be returned and premium refunded; [1999, c. 292, §2 (NEW).]

F. A statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes; and [1999, c. 292, §2 (NEW).]

G. A brief description of the relationship of cost of care and benefits. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

3. **Qualification for purposes of federal and state individual income taxes.** The face page of all long-term care insurance policies and certificates must contain a prominent statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes.

[1999, c. 292, §2 (NEW) .]

4. **Individual life insurance policy that provides long-term care benefits.** At the time of policy or certificate delivery, a policy summary must be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request but, regardless of a request, the insurer shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary also must include:

A. An explanation of how the long-term care benefits interact with other components of the policy, including deductions from death benefits; [1999, c. 292, §2 (NEW).]

B. An illustration of the amount of benefits, the length of benefits and the guaranteed lifetime benefits, if any, for each covered person; [1999, c. 292, §2 (NEW).]

C. Any exclusions, reductions and limitations on benefits of long-term care; [1999, c. 292, §2 (NEW).]

D. A statement indicating whether any long-term care inflation protection option required by law is available under this policy; and [1999, c. 292, §2 (NEW).]

E. If applicable to the policy or certificate type, the summary must also include:

(1) A disclosure of the effects of exercising other rights under the policy;

(2) A disclosure of guarantees related to long-term care costs of insurance charges; and

(3) Current and projected maximum lifetime benefits. [1999, c. 292, §2 (NEW).]

The provisions of the policy or certificate summary listed in this subsection may be incorporated into a basic illustration required to be delivered in accordance with the life insurance policy summary that is required to be delivered in accordance with this Title governing life insurance policy summaries or with comparable statutory requirements in any other state.

[1999, c. 292, §2 (NEW) .]

5. **Certificates of group long-term care insurance.** A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this State must include:

A. A description of the principal benefits and coverage provided in the policy; [1999, c. 292, §2 (NEW).]

B. A statement of the principal exclusions, reductions and limitations contained in the policy; and [1999, c. 292, §2 (NEW).]

C. A statement that the group master policy determines governing contractual provisions and that the policy is available for viewing in the offices of the policyholder and will be copied for the certificate holder upon request at no cost. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY

1999, c. 292, §2 (NEW).

§5075. REQUIRED PROVISIONS; PROHIBITIONS; LOSS RATIO STANDARDS FOR LONG-TERM CARE INSURANCE

1. **Prohibitions.** A long-term care insurance policy or certificate may not:

A. Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual; [1999, c. 292, §2 (NEW).]

B. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or [1999, c. 292, §2 (NEW).]

C. Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than for lower levels of care. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

2. **Preexisting condition.** A long-term care insurance policy or certificate must provide coverage for preexisting conditions in accordance with the following.

A. A policy or certificate may not define "preexisting condition" in a manner that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person. [1999, c. 292, §2 (NEW).]

B. A policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless such loss or confinement begins within 6 months following the effective date of coverage of an insured person. [1999, c. 292, §2 (NEW).]

C. The definition of "preexisting condition" in paragraph A does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph B expires. A long-term care insurance policy or certificate may not exclude, or use waivers or riders of any kind to exclude, limit or reduce, coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph B. [1999, c. 292, §2 (NEW).]

D. The superintendent may extend the limitation periods set forth in paragraphs A and B with regard to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

3. **Prior hospitalization or institutionalization.** A long-term care insurance policy or certificate that contains provisions regarding prior hospitalization or institutionalization must comply with the following requirements.

A. A long-term care insurance policy or certificate may not be delivered or issued for delivery in this State if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior institutionalization requirement. [1999, c. 292, §2 (NEW).]

B. A long-term care insurance policy or certificate containing post-confinement, post-acute care or recuperative benefits must clearly label such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits." [1999, c. 292, §2 (NEW).]

C. A long-term care insurance policy, certificate or rider that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days. [1999, c. 292, §2 (NEW).]

D. The superintendent may adopt rules further restricting the use of prior institutionalization requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

4. **Free-look provision.** Applicants for long-term care insurance have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. A long-term care insurance policy or certificate must have a notice prominently printed on the first page or attached to the policy or certificate stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

[1999, c. 292, §2 (NEW) .]

5. **Benefit payment status report on long-term care benefits.** Any time a long-term care benefit that is funded through a life insurance policy or certificate by the acceleration of the death benefit is in benefit payment status, a monthly report must be provided to the policyholder or certificate holder. The report must include:

A. Any long-term care benefits paid out during the month; [1999, c. 292, §2 (NEW).]

B. An explanation of any changes in the policy, including changes in death benefits or cash values, due to long-term care benefits being paid out; and [1999, c. 292, §2 (NEW).]

C. The amount of long-term care benefits existing or remaining. [1999, c. 292, §2 (NEW).]

[1999, c. 292, §2 (NEW) .]

6. **Loss ratios.** The superintendent may adopt rules establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies or certificates is contained in the rules. Any loss ratio standards for employer groups as described in section 2804 and labor union groups as described in section 2805 apply to the group policy and not to certificates. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 292, §2 (NEW) .]

7. **Marketing as long-term care or nursing home insurance.** This chapter applies to any policy, certificate or rider advertised, marketed or offered as long-term care or nursing home insurance.

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5075-A. CERTIFICATION BY SUPERINTENDENT

1. **Filing of form.** An insurer, nonprofit hospital or medical service organization or nonprofit health care plan may request, at the time it files a policy or contract for approval for issuance or delivery in the State or at any time thereafter, that the superintendent certify the policy or contract as a long-term care insurance policy.

[2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF) .]

2. **Determination.** Within 60 days after receipt of a request for certification, the superintendent shall in writing:

A. Certify that the policy or contract complies with this section; [2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF).]

B. Deny the request and state the reasons for the denial; or [2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF).]

C. Notify the insurer, nonprofit hospital or medical service organization or nonprofit health care plan that an insufficient basis exists for determining whether a certification should be made and indicate the nature of the insufficiency. [2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF).]

[2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF) .]

3. **Standards for compliance.** The superintendent shall certify a policy or contract submitted for review under this section as a long-term care insurance policy if the superintendent finds that the policy or contract complies with all the standards applicable to long-term care policies set forth in this chapter and in chapters 27, 33 and 35 and rules adopted pursuant to those chapters by the superintendent. Waivers granted under the rules must be taken into consideration.

[2001, c. 679, §1 (NEW); 2001, c. 679, §6 (AFF) .]

SECTION HISTORY
2001, c. 679, §1 (NEW). 2001, c. 679, §6 (AFF).

§5076. INCONTESTABILITY PERIOD

1. **Policies or certificates in effect for less than 6 months.** For a policy or certificate that has been in effect for less than 6 months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that was material to the acceptance for coverage.

[1999, c. 292, §2 (NEW) .]

2. **Policies or certificates in effect for more than 6 months but less than 2 years.** For a policy or certificate that has been in effect for at least 6 months but less than 2 years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that was both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.

[1999, c. 292, §2 (NEW) .]

3. **Policies or certificates in effect for 2 years or more.** After a policy or certificate has been in effect for at least 2 years, the policy or certificate may not be contested upon the grounds of misrepresentation alone. The policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

[1999, c. 292, §2 (NEW) .]

4. **Field-issued policies or certificates.** A long-term care insurance policy or certificate may not be field-issued if the compensation to the field issuer is based on the number of policies or certificates issued. For the purposes of this subsection, "field-issued" means a policy or certificate issued by a producer or a 3rd-party administrator pursuant to the underwriting authority granted to the producer or 3rd-party administrator by an insurer using the insurer's underwriting guidelines.

[2007, c. 232, §1 (AMD) .]

5. **Recovery of benefit payments by the insurer.** If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

[1999, c. 292, §2 (NEW) .]

6. **Death of the insured.** Upon the death of the insured, this section does not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care and the remaining death benefits under these policies are governed by sections 2507 and 2615 relating to the incontestability requirements for individual and group life insurance. In all other events, this section applies to life insurance policies that accelerate benefits for long-term care.

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY
1999, c. 292, §2 (NEW). 2007, c. 232, §1 (AMD).

§5077. NONFORFEITURE BENEFITS

1. **Offer required.** Except as provided in subsection 2, a long-term care insurance policy or certificate may not be delivered or issued for delivery in this State unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that must be made available for a specified period of time following a substantial increase in premium rates.

[1999, c. 292, §2 (NEW) .]

2. **Group policyholders.** When a group long-term care insurance policy is issued, the offer required in subsection 1 must be made to the group policyholder. If the group long-term care insurance policy is issued to a group described in section 2808 other than to a continuing care retirement community or other similar entity, the offer must be made to each proposed certificate holder.

[1999, c. 292, §2 (NEW) .]

3. **Rules.** The superintendent shall adopt rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits and the standards regarding contingent benefit upon lapse, including a determination of the specified period

of time during which a contingent benefit upon lapse is available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection 1. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 292, §2 (NEW) .]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5078. RULEMAKING

The superintendent shall adopt rules to promote premium adequacy, to protect a policyholder and a certificate holder in the event of substantial rate increases and to establish minimum standards for marketing practices, insurance producer compensation, insurance producer education, insurance producer testing, penalties and reporting practices for long-term care insurance. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 232, §2 (AMD).]

SECTION HISTORY
1999, c. 292, §2 (NEW). 2007, c. 232, §2 (AMD).

§5079. PENALTIES

In addition to any other penalties provided by this Title or the laws of this State, an insurer or insurance producer that violates any requirement of this chapter or rule adopted pursuant to this chapter relating to the regulation of long-term care insurance or the marketing of such insurance is subject to a fine of up to the greater of 3 times the amount of commissions paid for each policy involved in the violation or $10,000. [1999, c. 292, §2 (NEW).]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5080. APPLICABILITY

This chapter applies to long-term care policies and certificates issued or delivered in this State on or after January 1, 2000. Policies and certificates issued prior to January 1, 2000 and remaining in effect on that date are subject to the requirements of chapter 68. Those policies and any certificates issued pursuant to those policies prior to January 1, 2000 continue in effect subsequent to the enactment of this chapter. [1999, c. 292, §2 (NEW).]

All certificates of coverage issued or delivered to residents of this State after January 1, 2000 must meet the requirements of this chapter and any rules adopted pursuant to this chapter, except that long-term care policies or certificates issued pursuant to a provision included in a policy approved in accordance with chapter 68 giving a policyholder or certificate holder a right to purchase or increase coverage at a later date may be issued with benefits consistent with chapter 68 after January 1, 2000. [1999, c. 292, §2 (NEW).]

SECTION HISTORY
1999, c. 292, §2 (NEW).

§5081. PRODUCER TRAINING REQUIREMENTS

1. **Training required.** An individual may not sell, solicit or negotiate long-term care insurance unless:

A. The individual is licensed as a life or health insurance producer; [2007, c. 232, §3 (NEW).]

B. The individual has completed a one-time training course that is no less than 8 hours in length; and [2007, c. 232, §3 (NEW).]

C. The individual completes ongoing training of no less than 4 hours every 24 months thereafter. [2007, c. 232, §3 (NEW).]

An individual licensed as a life or health insurance provider and who is actively selling, soliciting or negotiating long-term care insurance as of the effective date of this section must complete a one-time training course by July 1, 2008 and ongoing training every 24 months thereafter in order to continue selling, soliciting or negotiating long-term care insurance.

The training required by this subsection must meet the requirements set forth in subsection 2. The training requirements of subsection 2 may be approved as continuing education courses under chapter 16, subchapter 7.

[2007, c. 232, §3 (NEW) .]

2. **Content of training.** The one-time training required by this section must consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to:

A. State and federal regulations and requirements and the relationship between the Long-term Care Partnership Program established in Title 22, section 3174-GG and other public and private coverage of long-term care services, including Medicaid; [2007, c. 232, §3 (NEW).]

B. Available long-term care services and providers; [2007, c. 232, §3 (NEW).]

C. Changes or improvements in long-term care services or providers; [2007, c. 232, §3 (NEW).]

D. Alternatives to the purchase of private long-term care insurance; [2007, c. 232, §3 (NEW).]

E. The effect of inflation on benefits and the importance of inflation protection; and [2007, c. 232, §3 (NEW).]

F. Consumer suitability standards and guidelines. [2007, c. 232, §3 (NEW).]

The training required by this section may not include training that is specific to an insurer or company product or that includes any sales or marketing information, materials or training other than that required by state or federal law.

[2007, c. 232, §3 (NEW) .]

3. **Verification.** An insurer shall:

A. Obtain verification that a producer has received training required by this section before the producer may sell, solicit or negotiate the insurer's long-term care insurance products; [2007, c. 232, §3 (NEW).]

B. Maintain records of the verification under paragraph A for at least 3 years; and [2007, c. 232, §3 (NEW).]

C. Make verification records available to the superintendent upon request. [2007, c. 232, §3 (NEW).]

[2007, c. 232, §3 (NEW) .]

4. **Records.** An insurer shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the superintendent to provide assurance to the Department of Health and Human Services that producers have received the training required by this section and that its producers have demonstrated an understanding of the partnership policies and their relationship

to public and private coverage of long-term care, including Medicaid, in this State. The records must be maintained for a period of at least 3 years after each producer has received the training required by this section and must be made available to the superintendent upon request.

[2007, c. 232, §3 (NEW) .]

5. **Reciprocity.** The satisfaction of training requirements in this section in another state is considered to satisfy the training requirements in this section.

[2007, c. 232, §3 (NEW) .]

SECTION HISTORY
2007, c. 232, §3 (NEW).

§5082. LONG-TERM CARE PARTNERSHIP PROGRAM; AVAILABILITY OF QUALIFIED POLICIES

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eligible policyholder" means:

(1) An individual who holds a qualified individual policy issued before or during the notice period by an insurer that actively markets individual partnership policies in this State on or after the effective date of this section and is not receiving benefits or in a waiting period to receive benefits; or

(2) An employer or other group policyholder that holds a qualified group policy issued before or during the notice period by an insurer that actively markets group partnership policies in this State on or after the effective date of this section. [2011, c. 198, §1 (NEW).]

B. "Long-term Care Partnership Program" means the Long-term Care Partnership Program established in Title 22, section 3174-GG. [2011, c. 198, §1 (NEW).]

C. "Notice period" means the period between July 1, 2004 and the date an insurer begins actively marketing partnership policies in this State. [2011, c. 198, §1 (NEW).]

D. "Partnership policy" means a long-term care insurance policy with an effective date of July 1, 2009 or later that is offered with the intent to meet the requirements of the Long-term Care Partnership Program. [2011, c. 198, §1 (NEW).]

E. "Qualified policy" means a long-term care insurance policy that is offered with the intent to meet the requirements of 26 United States Code, Section 7702B(b). [2011, c. 198, §1 (NEW).]

[2011, c. 198, §1 (NEW) .]

2. **Notice.** The following provisions apply to an insurer that actively markets a partnership policy in this State on or after the effective date of this section. With respect to an employer group, an insurer shall provide any notice required under this section to the employer that is the policyholder of a qualified policy.

A. An insurer that actively markets partnership policies in this State as of the effective date of this section shall provide notice to an eligible policyholder that purchased a qualified policy during the notice period that the policyholder may be able to participate in the Long-term Care Partnership Program. The insurer shall initiate the exchange process in accordance with subsection 4 within 12 months of the effective date of this section. [2011, c. 198, §1 (NEW).]

B. An insurer that begins to actively market partnership policies in this State after the effective date of this section shall provide notice to an eligible policyholder that purchased a qualified policy during the notice period that the policyholder may be able to participate in the Long-term Care Partnership

Program. The insurer shall initiate the exchange process in accordance with subsection 4 within 12 months of the date the insurer begins to market partnership policies in this State. [2011, c. 198, §1 (NEW).]

[2011, c. 198, §1 (NEW) .]

3. **Request for review.** In addition to the requirements of subsection 2, at the request of an eligible policyholder of a qualified policy issued prior to the notice period, an insurer that actively markets partnership policies in this State shall review the qualified policy to identify whether the qualified policy meets the requirements of the Long-term Care Partnership Program and take an action described in subsection 4, paragraph A or B. If a request for review under this subsection is made more than 12 months after the effective date of this section, the insurer has no obligation to review the policy.

[2011, c. 198, §1 (NEW) .]

4. **Exchange process.** An insurer that actively markets partnership policies in this State shall identify those qualified policies issued during the notice period that currently meet all the requirements of the Long-term Care Partnership Program as specified in Bureau of Insurance Bulletin 368 dated January 22, 2010 for use with the Long-term Care Partnership Program and those that do not meet all of the requirements and:

A. For those qualified policies that currently meet all of the requirements, issue to each policyholder the Important Notice Regarding Your Policy's Long-term Care Insurance Partnership Status, as prescribed in the Appendix of Bureau of Insurance Bulletin 368 dated January 22, 2010, along with a policy amendment reflecting the effective date of the partnership status; and [2011, c. 198, §1 (NEW).]

B. For those qualified policies that do not meet all of the requirements, notify each policyholder that the policy may be eligible for an exchange to a partnership policy. The insurer shall also notify the policyholder that the exchange is subject to underwriting and that the premium for the new policy is based on the policyholder's attained age on the date of the exchange. The policyholder has 60 days from the date of the notice to consider this offer. If the policyholder accepts the offer after 60 days, the insurer is not obligated to process an exchange. If the policyholder requests additional coverage, the additional coverage is also subject to underwriting and the premium for the additional coverage must be based on the policyholder's attained age on the date the changes take effect. [2011, c. 198, §1 (NEW).]

[2011, c. 198, §1 (NEW) .]

5. **Individual policyholder no longer receiving benefits.** If an individual policyholder is not an eligible policyholder because the policyholder is receiving benefits or is in a waiting period to receive benefits, that individual policyholder has 12 months from the expiration of any waiting period after which the policyholder does not begin to receive benefits or from the expiration of any period when benefits have ended to request a review by an insurer as otherwise provided under subsection 3.

[2011, c. 198, §1 (NEW) .]

6. **Applicability.** If an insurer does not actively market both individual and group partnership policies in this State, this section applies to that insurer only with respect to the particular market in which the insurer actively markets partnership policies.

[2011, c. 198, §1 (NEW) .]

SECTION HISTORY
2011, c. 198, §1 (NEW).

§5083. PAYMENT OF CLAIMS

1. **Notice of claim for benefits; response by insured.** Notwithstanding any other provision of this Title, upon receipt of a notice of claim for benefits under a policy or certificate of long-term care insurance delivered or issued for delivery in this State, an insurer, whether actively marketing or renewing long-term care insurance in this State, shall provide the insured a written statement with sufficient detail to permit the insured to understand and respond with the documentation specified in subsection 2. The written statement must be provided by the insurer within 10 business days following receipt of the notice of claim. For purposes of this section, "insured" includes a person designated by the insured as the insured's representative.

[2013, c. 278, §2 (NEW) .]

2. **Documentation.** The documentation an insurer may require of an insured for the payment of a claim for benefits under a policy or certificate of long-term care insurance includes, but is not limited to:

A. A statement from the insured making the claim for benefits; [2013, c. 278, §2 (NEW).]

B. A signed release permitting the insurer to obtain personal health care information about the insured pursuant to the federal Health Insurance Portability and Accountability Act of 1996; [2013, c. 278, §2 (NEW).]

C. A statement from the insured's physician, including the appropriate diagnosis and a treatment and care plan for the insured; [2013, c. 278, §2 (NEW).]

D. A statement from the long-term care provider rendering services to the insured, including an itemized bill for services, the provider's license number and any daily nursing notes; and [2013, c. 278, §2 (NEW).]

E. A copy of any power of attorney executed by the insured. [2013, c. 278, §2 (NEW).]

Except for information solely in the possession of the insured, the burden is on the insurer to obtain any information other than that described in paragraphs A to E that is reasonably necessary to pay or continue paying the claim. The insured has a continuing obligation to cooperate with the insurer in order for the insurer to obtain needed information.

[2013, c. 278, §2 (NEW) .]

3. **Payment of claim.** A claim for payment of benefits under a policy or certificate of long-term care insurance delivered or issued for delivery in this State is payable within 30 days after the documentation and information identified in subsection 2 as reasonably necessary to pay the claim for benefits have been received by the insurer. Within 30 days after receipt of that documentation and information, the insurer shall either pay the claim or issue a written notice to the insured declining to pay all or part of the claim and the specific reason for denial in accordance with this subsection.

A. An insurer may not extend the time for payment of a claim beyond 30 days after receipt of documentation and information related to a technical issue as designated in rules adopted by the bureau. [2013, c. 278, §2 (NEW).]

B. Except as provided in paragraph A, an insurer may delay payment of a claim and request additional documentation and information related to a substantive issue as designated in rules adopted by the bureau. [2013, c. 278, §2 (NEW).]

[2013, c. 278, §2 (NEW) .]

4. **Ongoing claim.** Except for information solely in the possession of the insured, if, during the course of an ongoing claim for benefits paid on a monthly or recurring basis, the insurer identifies the need for additional reasonable documentation to ensure the insured remains entitled to benefits under the policy or certificate of long-term care insurance, the burden is on the insurer to obtain that information. The insured has a continuing obligation to cooperate with the insurer in order for the insurer to obtain needed information.

[2013, c. 278, §2 (NEW) .]

5. **Appeals of claims denials.** An insured who receives a claims denial in accordance with this section has the right to internal appeal and, after exhausting an insurer's internal appeals process, the right to request an external review. The superintendent shall adopt rules to determine the standards for internal appeal and external review in a manner consistent with model legislation adopted by the National Association of Insurance Commissioners, or its successor organization. The written notice to the insured declining to pay all or part of the claim as required by subsection 3 must include a statement informing the insured of the insured's rights to internal appeal and external review and a statement of the insured's right to seek assistance or file a complaint with the bureau and the toll-free telephone number of the bureau.

[2013, c. 278, §2 (NEW) .]

6. **Interest on overdue claim.** An undisputed claim that is not paid within 30 days is overdue. If an insurer fails to pay an undisputed claim or any undisputed part of the claim when due, the amount of the overdue claim or part of the claim bears interest at the rate of 1 1/2% per month after the due date.

[2013, c. 278, §2 (NEW) .]

7. **Attorney's fees.** Reasonable attorney's fees for advising and representing a claimant on an overdue claim or action for an overdue claim must be paid by the insurer if overdue benefits are recovered in an action against the insurer or if overdue benefits are paid after receipt of notice of the attorney's representation.

[2013, c. 278, §2 (NEW) .]

8. **No limitation on action by insured.** This section does not prohibit or limit any claim or action for a claim that the insured has against the insurer.

[2013, c. 278, §2 (NEW) .]

9. **Rules.** The superintendent may adopt or amend rules in order to carry out the purposes of this section. Rules adopted pursuant to this section, including amendments to existing rules designated as major substantive, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 278, §2 (NEW) .]

SECTION HISTORY
2013, c. 278, §2 (NEW).

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